

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PETER HALMOS, INTERNATIONAL
YACHTING CHARTERS, INC. and HIGH
PLAINS CAPITAL,

Plaintiffs,

v.

INSURANCE COMPANY OF NORTH
AMERICA and STRICKLAND MARINE
INSURANCE, INC. (f/k/a STRICKLAND
MARINE AGENCY, INC.),

Defendants.

Case No.:

**MOTION TO COMPEL COMPLIANCE
WITH SUBPOENA BY NOAA**

Related Case No. 08-10084-CIV Martinez/Brown
(Pending in Southern District of Florida, Key West
Division)

**NOTED ON MOTION CALENDAR:
Friday, April 2, 2010**

Defendant Insurance Company of North America (“INA”), by and through its counsel, moves the Court for an order to compel compliance by NOAA with the Subpoena in a Civil Case served on NOAA by INA on or about July 6, 2009. INA submits the following in support of its motion:

A. Facts

1. INA is a defendant in an action pending in the Southern District of Florida, Key West Division, captioned *Peter Halmos, International Yachting Charters, Inc. and High Plains Capital v. Insurance Company of North America and Strickland Marine Insurance*,

MOTION TO COMPEL COMPLIANCE WITH SUBPOENA BY
NOAA - 1

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1 *Inc. f/k/a Strickland Marine Agency, Inc.*, Case No. 08-10084-CIV-Martinez/Brown (“the
2 Lawsuit”).

3 2. INA served a Subpoena in a Civil Case upon the NOAA Office of General
4 Counsel, 7600 Sand Point Way N.E., Seattle, WA 98115, on July 6, 2009. The Subpoena
5 demanded the production of all documents and information prepared on behalf of, directed to
6 or received from the plaintiffs with respect to two vessels, the S/Y LEGACY and the M/V
7 MONGOOSE. Response to the Subpoena was due by July 21, 2009 in Seattle. A copy of the
8 Subpoena is attached to the Declaration of Robert M. Browning, filed with this Motion, as
9 Exhibit A.

10 3. On August 19, 2009, the district court in Florida imposed a stay on subpoenas,
11 including the NOAA subpoena. On November 13, 2009, Magistrate Judge Stephen T. Brown
12 of the United States District Court, Southern District of Florida, lifted the stay in the Lawsuit
13 and ordered all recipients of subpoenas served by INA, including NOAA, to comply with the
14 subpoenas by ten days from the date of the court’s order. A copy of the court’s November 13,
15 2009 Order Granting Motion to Lift Stay is attached to the Browning Declaration as Exhibit
16 B. NOAA did not comply by the Order’s deadline.

17 4. On December 3, 2009, INA re-served the same Subpoena on the NOAA Office
18 of General Counsel in Seattle. A copy of Judge Brown’s November 13, 2009 Order lifting the
19 stay was also served on the NOAA Office of General Counsel.

20 5. INA’s counsel attempted to seek compliance with the Subpoena from NOAA
21 by email and telephone calls, beginning in early December, 2009. See email messages dated
22 December 9, 2009; December 16, 2009; December 18, 2009; February 23, 2010; and March
23 4, 2009. Browning Decl., Ex. C, D.

24 6. NOAA did not object under Federal Rule of Civil Procedure 45(c)(2)(B) to the
25 Subpoena it received from INA.

7. To date, INA has received no response to the Subpoena served on NOAA last July and December. Instead, NOAA only made promises that documents would be produced in the future. No documents or information have been received by INA as of the date of this Motion.

B. Authority

Federal Rule of Civil Procedure 45(c)(2)(B) allows for enforcement of a subpoena served on a non-party by means of a motion to compel its compliance. Where the non-party fails to raise objections to the subpoena in a timely manner, any objections are waived. *In re DG Acquisition Corp.*, 151 F.3d 75 (2d Cir. 1998); *In re Corso*, 328 B.R. 375 (E.D. N.Y. 2005). NOAA has not objected to the Subpoena served by INA and has had ample time to comply. It has failed to produce any of the information requested. An Order of this Court requiring NOAA to produce all documents and information requested in the Subpoena is appropriate and necessary. INA also requests the Court to order NOAA to pay INA's attorney fees and costs incurred in bringing this Motion. *See* Fed. R. Civ. P. 45(e).

A proposed Order is attached.

DATED this 18th day of March, 2010.

COZEN O'CONNOR

By: /s/ Craig H. Bennion
 Craig H. Bennion, WSBA No. 11646
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Attorneys for Defendant
 Insurance Company of North America

CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2010, I filed INA's Motion to Compel Compliance with Subpoena by NOAA, the Declaration of Robert M. Browning, and a proposed Order with the Clerk of the Court and caused a copy of each to be served them on the following:

Craig R. O'Connor
Special Counsel
NOAA Office of General Counsel
7600 Sand Point Way NE
Seattle, WA 98115

DATED this 18th day of March, 2010.

COZEN O'CONNOR

By: /s/ Craig H. Bennion

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